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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

7 || ANDREW JAMES DRISKEL,

No. C 10-5117 SI

8 Plaintiff,

**ORDER SETTING ASIDE DEFAULT
AGAINST DEFENDANT JIMMIE
MIDDLETON; DISMISSING ACTION
WITHOUT PREJUDICE**

10 | REGINALD KENAN, *et al.*,

11 || Defendants.

On October 28, 2011, the Court issued an Order to Show Cause directing plaintiff to demonstrate that this Court has personal jurisdiction over defendants Middleton, Kuznof and Williams. The Order was mailed to plaintiff's address of record, and the Order was returned to the Court as undeliverable. Plaintiff has not taken any action in this case since filing a pleading on May 10, 2011.

17 Based upon the record before this Court, it appears that this Court lacks jurisdiction over North
18 Carolina defendants Middleton, Kuznof and Williams. The complaint does not allege that these
19 defendants have any contacts with California, and all of the events giving rise to plaintiff's claims
20 occurred in North Carolina. Because the Court lacks personal jurisdiction over defendant Middleton,
21 the entry of default must be set aside. *See Veeck v. Commodity Enterprises, Inc.*, 487 F.2d 423, 426 (9th
22 Cir. 1973). Accordingly, the Court sets aside the default against defendant Middleton, and DISMISSES
23 this case for lack of jurisdiction and based on plaintiff's failure to prosecute. The dismissal is without
24 prejudice.

IT IS SO ORDERED.

Dated: November 15, 2011

Susan Illston
SUSAN ILLSTON
United States District Judge